

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ADMINISTRATORS, INC.,)	
Plaintiff,)	Case No. C06-400-JPD
v.)	
MIDLAND TRUCKING, a division of)	ORDER GRANTING PLAINTIFF'S
JIMCO, INC., a Washington Corporation,)	MOTION FOR SUMMARY
Defendant.)	JUDGMENT

I. INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff, Northwest Administrators, Inc., brings this action to compel defendant, Midland Transportation, Inc., to submit to an audit of certain employee tax and payroll records in connection with its administration of a trust fund that provided health and welfare benefits for defendant's employees.¹ This matter comes before the Court upon plaintiff's motion for summary judgment. Dkt. No. 7. Defendant opposes the motion. Dkt. No. 11. Having carefully considered the parties' papers, supporting materials, and the balance of the record, the Court GRANTS plaintiff's motion for summary judgment. Dkt. No. 7. Further,

¹The docket and pleadings refer to defendant as "Midland Trucking," but the documents involved in this case refer to defendant as "Midland Transportation, Inc."

the Court GRANTS plaintiff's request for attorney's fees in the amount of \$6,029.25.

II. FACTS AND PROCEDURAL HISTORY

The relevant facts of this case are brief and are not disputed by the parties. *See* Dkt. No. 11 at 2. On May 18, 1988, certain labor unions and employers executed the Washington Teamsters Welfare Trust Agreement and Declaration of Trust ("Trust Agreement"). Dkt. No. 8, Ex. A.² The Trust Agreement created the Washington Teamsters Welfare Trust Fund ("Trust Fund" or "Trust"), which provides certain life, accident, and health insurance for the employees of employers who contribute to the Trust Fund. *Id.* at art. III. The Trust Fund is governed by a board of trustees ("Trustees"). *Id.* at art. II. Employers bound by a collective bargaining agreement are required to contribute to the Trust Fund. *Id.* at art. IV.

On June 8, 2001, defendant and Teamsters Local 760 ("Local 760") entered into a Collective Bargaining Agreement ("CBA") that remained in effect from July 1, 2000, to June 30, 2004.³ Ex. B at art. 10. On June 8, 2001, Local 760 and defendant also signed the Washington Teamsters Welfare Trust Subscription Agreement ("Subscription Agreement"). Ex. C. The Subscription Agreement bound defendant to the terms of the Trust Agreement and provided that the Trustees retained "the sole discretion and authority to interpret the terms of the Trust's benefit plans, the plans' eligibility requirements, and other matters related to the administration and operation of the Trust and its benefit plans." *Id.* On June 20, 2001,

²Unless otherwise noted, all subsequent citations to the record are to Dkt. No. 8 and make reference only to the appropriate exhibit number.

³Among other things, the CBA required defendant to make certain contributions to the Trust Fund or to provide comparable benefits through alternative programs. Ex. C at art. 5. The CBA required defendant to continue to pay into the Trust Fund in the "same amount and manner as required in the [CBA] until" a subsequent CBA is reached or the employer gives notice that it intends to "cancel its obligation." *Id.* Similarly, the Subscription Agreement and Special Agreement were to remain in effect during the term of the CBA. Exs. D and E. The parties do not dispute that defendant was bound to its payment obligations to the Trust Fund through May 31, 2005.

01 defendant signed a Special Agreement - Non-Bargaining Unit Employees (“Special
02 Agreement”) in which it agreed to contribute to the Trust Fund for the benefit of all
03 employees not covered by the CBA. Ex. D.

04 In May 2005, defendant notified the Trust Fund that it would terminate its obligations
05 under the Trust Agreement and transfer its benefits to another fund effective May 31, 2005.
06 Dkt. No. 8 at ¶ 20. In a letter dated February 21, 2006, plaintiff notified defendant that it
07 would conduct a close-out audit of defendant’s contributions for the period of January 1,
08 2002, to May 31, 2005, (“Relevant Period”) in order to verify that defendant had fulfilled its
09 contribution obligations. Ex. E. The letter requested that defendant provide certain employee
10 tax and payroll records to facilitate the audit. *Id.* In a letter dated March 2, 2006, however,
11 defendant, through counsel, refused to submit to the audit. Ex. F. It argued that it had no
12 obligation to do so because the request had been made after the termination of its obligation
13 to the Trust. Ex. F.

14 On March 9, 2006, plaintiff, though its attorneys, sent defendant a second written
15 request for the audit. Ex. G. The letter cited to particular portions of the Trust Agreement
16 and requested that the documents be produced no later than March 20, 2006. *Id.* Defendant
17 did not produce the documents. On March 21, 2006, plaintiff filed this action to compel
18 defendant to submit to the audit. Dkt. No. 1.

19 Plaintiff has moved for summary judgment. Dkt. No. 7. Plaintiff argues that the Trust
20 Agreement requires defendant to submit to the audit for the Relevant Period, even though the
21 request was made after defendant terminated its obligations under the Trust Agreement. *Id.* at
22 8-14. Plaintiff also moves the Court to award attorney’s fees. *Id.* at 15-17. Defendant
23 opposes the motion for summary judgment. Dkt. No. 11. Defendant argues that plaintiff’s
24 request for records relating to all of its employees is overbroad and that issues of fact exist as
25 to what employees are covered. *Id.* at 3-8. Defendant also argues that it has no obligation to
26 produce the requested documents because the request was made after it terminated its

01 participation in the Trust. *Id.* at 8-10. It also argues that plaintiff's requests were not made
02 for the "proper administration" of the Trust. *Id.* Although defendant argues that attorney's
03 fees and costs should not be awarded, it provides no substantive argument on this issue.

04 III. JURISDICTION

05 The Court has jurisdiction over this action pursuant to 29 U.S.C. §§ 1132(e)(1) and (f)
06 (1974). Pursuant to 28 U.S.C. § 636(c), the parties have consented to have this matter heard
07 by the undersigned United States Magistrate Judge. Dkt. No. 21. Venue is proper because
08 the subject Trust Fund is administered in the Western District of Washington. 29 U.S.C. §
09 1132(e)(2).

10 IV. ANALYSIS

11 A. Summary Judgment Standard.

12 Summary judgment is appropriate, when viewing the evidence in the light most
13 favorable to the nonmoving party, there exists "no genuine issue as to any material fact" such
14 that "the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A
15 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*
16 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact exist when the
17 evidence would enable "a reasonable jury . . . [to] return a verdict for the nonmoving party."
18 *Id.* In response to a summary-judgment motion that is properly supported, the nonmoving
19 party may not rest upon mere allegations or denials in the pleadings, but must set forth
20 specific facts demonstrating a genuine issue of fact for trial, and produce evidence sufficient to
21 establish the existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e); *Celotex*
22 *Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). A mere scintilla of evidence, however, is
23 insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. To defeat a motion
24 for summary judgment, the non-moving party must make more than conclusory allegations,
25 speculations, or argumentative assertions that material facts are in dispute. *T.W. Elec.*
26 *Service, Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-32 (9th Cir. 1987).

01 B. Plaintiff Has Authority to Audit Defendant For The Period Defendant Was
02 Covered by the Trust.

03 A trust for health or pension benefits is a contract governed by the Employee
04 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, as amended
05 (1988). ERISA requires that the assets of employee benefit plans be held in trust pursuant to
06 a written trust agreement. *Id.* at §§ 1102(a), 1103(a). The language of a trust agreement
07 defines the rights and obligations of the parties to the trust to the extent they are consistent
08 with ERISA. *Id.* at § 1145; *Santa Monica Culinary Welfare Fund v. Miramar Hotel Corp.*,
09 920 F.2d 1491, 1493-94 (9th Cir. 1990) (internal citations omitted).

10 Article IX, Section 1 of the Trust Agreement provides:

11 Each Employer shall promptly furnish to the Trustees on demand any and all
12 records of his Employees, concerning the classification of such employees,
13 their names, Social Security numbers, amount of wages paid and hours worked
14 and *any other payroll records and information that the Trustees may require*
15 *in connection with the administration of the Trust Fund. . . . The Trustees or*
their authorized representatives may examine the payroll books and records of
each Employer whenever such examination is deemed necessary or advisable
by the Trustees in connection with the proper administration of the Trust
Fund.

16 Ex. A (emphasis added). Further, the Subscription Agreement provides that the Trustees
17 “retain the sole discretion and authority to interpret the terms of the Trust’s benefit plans, the
18 plans’ eligibility requirements, and other matters related to the administration and operation of
19 the Trust and its benefit plans.” Ex. C. Hence, pursuant to the plain terms of the Trust
20 Agreement and Subscription Agreement, the Trustees enjoy broad audit rights in order to
21 ensure that employers fulfill their contribution obligations to the Trust. These broad audit
22 rights are not uncommon and are consistent with the common law rights of trustees and the
23 terms of ERISA. *Central States, Southeast & Southwest Areas Pension Fund v. Central*
24 *Transp., Inc.*, 472 U.S. 559, 571-74 (1985) (*Central States II*); Dkt. No. 8 at ¶ 19.

25 Defendant argues that it is not retroactively required to submit to the audit because it
26 had terminated its obligations to the Trust effective May 31, 2005. Dkt. No. 11 at 8-10. The

01 plain language of the Trust Agreement, however, belies this assertion. The Trust Agreement
02 explicitly empowers the Trustees to examine defendant's records "*whenever* such examination
03 is deemed necessary or advisable by the Trustees in connection with the proper administration
04 of the Trust Fund." Ex. A at art. IX, § 1 (emphasis added). The Trustees have determined
05 that such an audit is appropriate in this case to ensure that defendant fulfilled its contribution
06 obligations during the Relevant Period. Dkt. No. 8 at. ¶ 20. Hence, Trust Agreement
07 explicitly provides the trustees with the authority to request the audit in this context.

08 There is persuasive authority in the Ninth Circuit that supports this conclusion. For
09 instance, in *Building Service Employees Pension Trust v. Horsemen's Quarter Horse Racing*
10 *Ass'n*, 609 F. Supp. 1075, 1080 (N.D. Cal. 1985), a union trust fund brought suit to compel
11 defendant employers to produce certain employment and payroll records to ensure proper
12 compliance with the trust. The defendant employer argued that it was not obligated to
13 comply with the request because its contractual obligations to the trust had expired with the
14 parties' collective bargaining agreement. *Id.* at 1079. The court, however, concluded that the
15 plain language of the relevant trust instrument required defendant to disclose the documents.
16 *Id.* at 1080.

17 In this case, the Trust Agreement provides broad rights to compel an audit of relevant
18 records. Like the Trust Agreement, the agreement in *Building Service* provided for broad
19 audit rights to ensure compliance. The relevant section provided that "[t]he Pension Plan
20 Trustees may require of any Employer . . . any reasonable information, data and documents
21 relevant and suitable for the purposes of the administration of the Trust and Pension Plan."
22 *Building Service*, 609 F. Supp. at 1078. Even more compelling, plaintiffs in this case have the
23 "sole authority" to interpret the scope of those rights under the Subscription Agreement.
24 Although the Ninth Circuit has not had an opportunity to address this issue, *Building Service*
25 has been cited with approval in at least one other federal court. *See Rudd v. Baker Furniture*,
26 967 F. Supp. 984, 988 (M.D. Tenn. 1997) (directing retroactive audit after expiration of

collective bargaining agreement incorporating trust agreement). Defendant points to no authority that compels a contrary result.⁴

Defendant's assertion that summary judgment should be denied because an issue of fact exists regarding whether plaintiff's audit request was not made for the "proper administration" of the Trust is without merit. Termination audits such as the one sought here are routine. Dkt. No. 8 at ¶ 19. Moreover, previous audits of defendant in connection with the Trust Fund have been made in accordance with the terms of the Trust Agreement and applicable regulations. Dkt. No. 18 at ¶¶ 5-8. Audit requests that include information relating to covered and non-covered employees are within the broad rights of the Trustees, and Trustees generally. Ex. A at art. IX, § 1 (providing that the trustees may request "any other payroll records and information" required in connection with the administration of the Trust Fund); *Central States II*, 472 U.S. 559, 572-74 (noting that trustees have a duty to investigate and determine the identities of trust beneficiaries). Defendant's conclusory allegations to the contrary are insufficient to defeat plaintiff's motion. *T.W. Elec. Service, Inc.*, 809 F.2d at 630-32.

C. The Scope of Plaintiff's Request is Not Overly Broad.

Defendant argues that it need not comply with plaintiff's audit because the request is "overly broad." Dkt. No. 11 at 3-8. It argues that it is not obligated to comply with the request because the audit requires a review of records involving employees allegedly not covered by the CBA. The authorities relied upon by defendant for this proposition, however, are either inapposite, inaccurately cited, or unpersuasive.

For instance, defendant cites *Central States, Southeast & Southwest Areas Pension*

⁴Defendant cites *Boggs v. Boggs*, 520 U.S. 893, 839 (1997), but only for the proposition that the purpose of ERISA is to ensure the proper administration of employee pension plans for the benefits of employees and beneficiaries. Dkt. No. 11 at 8-9. *Boggs* sheds no light on defendant's argument regarding post-CBA expiration audits.

01 *Fund v. Central Transp., Inc.*, 698 F.2d 802 (6th Cir. 1982) (*Central States I*), for the
02 proposition that broad requests for records that include both covered and non-covered
03 employees are not enforceable, unless the party seeking the audit shows reasonable cause.
04 Dkt. No. 11 at 6. That case, however, was reversed by the Supreme Court in *Central States*
05 *II*. 472 U.S. at 564. In *Central States II*, the Supreme Court specifically noted that trustees
06 have an obligation to investigate and determine the identities of trust beneficiaries and that
07 such audit requests are consistent with that duty and the purposes of ERISA. *Id.* at 572-74.

08 Defendant relies upon *Building Service* and *Central States, Southeast and Southwest*
09 *Areas Pension Fund v. CRST, Inc.*, 641 F.2d 616 (8th Cir. 1981) (en banc), *overruled on*
10 *other grounds by Robbins v. Prosser's Moving and Storage Co.*, 700 F.2d 802 (8th Cir.
11 1983), for the same proposition. Dkt. No. 11 at 6-7. As discussed above, the Court in
12 *Building Service* actually directed that the disclosure of the requested documents be made.⁵
13 Although the court in *CRST* did find that a request for documents containing information
14 relating to covered and non-covered employees was overbroad, that case was decided before
15 *Central States II* and is, in any case, not binding on this Court.

16 The defendant offers no binding or persuasive authority that compels this Court to
17 conclude that plaintiff lacks the authority to compel the requested audit. Accordingly, plaintiff
18 is entitled to summary judgment in its favor.

19 D. Plaintiff is Entitled to Attorney's Fees.

20 Plaintiff argues that the Court should direct an award of reasonable attorney's fees and
21 costs. Dkt. No. 7 at 15-18. It has offered the declaration of Thomas A. Leahy in support of
22 the request, which indicates plaintiff's counsel has incurred fees and costs in the total amount
23

24 ⁵*Building Service* distinguished *Central States I* and *CRST* by noting that the funds in
25 those cases "sought records of employees who were never covered" by the applicable
26 agreements. 609 F. Supp at 1080. Although defendant appears to be arguing that is the case
here, all of those cases were decided prior to *Central States II*.

01 of \$6,029.25. Dkt. No. 19. Defendant opposes the request, but offers no substantive
02 arguments as to why it should be denied. Dkt. No. 11 at 2.

03 ERISA empowers the Court, “in its discretion,” to grant a “reasonable attorney’s fee
04 and costs of action to either party.” 29 U.S.C. § 1132(g)(1). To determine whether an award
05 is appropriate, the Court must consider the following factors:

06 (1) the degree of the opposing parties’ culpability or bad faith; (2) the ability
07 of the opposing party to satisfy an award of fees; (3) whether an award of fees
08 against the opposing party would deter others from acting under similar
09 circumstances; (4) whether the parties requesting fees sought to benefit all participants and
10 beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and
11 (5) the relative merits of the parties’ positions.

12 *Miramar Hotel Corp.*, 920 F.2d at 1495 (citing *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446,
13 453 (9th Cir.1980). A court need not find that all five factors weigh in favor of the movant in
14 order to direct an award attorney’s fees. *McElwaine v. U.S. West, Inc.*, 176 F.3d 1167, 1173
15 (9th Cir. 1999).


16 In this case, the balance of *Hummell* factors tips sharply in favor of granting plaintiff’s
17 motion for attorney’s fees. Although both parties suggest that the other is acting in bad faith,
18 there is no specific evidence of such behavior by either party. There is no evidence in the
19 record as to defendant’s ability to satisfy an attorney’s fee award. The defendant did not
20 address this issue in its response. The third *Hummell* factor is not particularly helpful; the
21 Court can only speculate as to whether an award in this case would discourage future litigants
22 from asserting the same arguments.

23 The fourth and fifth *Hummell* factors weigh heavily in plaintiff’s favor. Plaintiff
24 requested the audit at issue to ensure defendant had properly complied with its obligations
25 under the Trust Agreement and other documents. The audit was thus requested for the
26 benefit of the Trust Fund’s participant’s and beneficiaries. Finally, the Court finds the fifth
Hummell factor particularly persuasive. The strength of the plaintiff’s position on the merits
suggests an award of attorney’s fees is appropriate in this case.

V. CONCLUSION

01 For the reasons discussed above, the Court GRANTS plaintiff's motion for summary
02 judgment. Dkt. No. 7. Defendant is directed to submit to the requested audit. In addition,
03 the Court GRANTS plaintiff's request for attorney's fees and costs in the amount of
04 \$6,029.25.

05 DATED this 31st day of July, 2006.

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07 JAMES P. DONOHUE
08 United States Magistrate Judge
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